



**MINUTES OF THE CITY COUNCIL MEETING  
OF THE CITY OF HAYWARD  
City Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, September 28, 2004, 8:00 p.m.**

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**MEETING**

The City Council Meeting was called to order by Mayor Cooper at 8:00 p.m., followed by the Pledge of Allegiance led by Council Member Halliday.

**ROLL CALL**

Present: COUNCIL MEMBERS Jimenez, Halliday, Ward, Dowling, Henson  
MAYOR Cooper  
Absent: Council Member Quirk

**PROCLAMATIONS:**

October 1-18 as Voter Registration Weeks

Mayor Cooper presented the proclamation to Nancy Van Huffel, President of the Eden Area League of Women Voters, which has partnered with the City Clerk to utilize the college students in the Americorps Program at Chabot College for the purpose of educating high school students on their rights and responsibilities for voting, and to make presentations at various venues including the use of an "eBus" that will be available at the City's Cultures in Harmony Festival on October 2. She encouraged citizens of Hayward to inform themselves about issues and candidates of the November 2, 2004 General Election. Ms. Van Huffel thanked the Council for the proclamation, and noted the League's current registration efforts and encouraged all to register and vote.

October 3-9 as National Fire Prevention Week

Mayor Cooper presented the proclamation to Fire Chief Arfsten. This week is commemorated nationally and supported by the public safety efforts of fire departments, schools and other safety advocates, in conjunction with the National Fire Protection Association. She called upon the people of the City of Hayward to remember the Fire Prevention 2004 reminder, "It's Fire Prevention Week: Test Your Smoke Alarms," and urged all residents to heed advice to install and maintain smoke alarms. He responded to questions from Council related to the testing of alarms and response procedures.

**PUBLIC COMMENTS**

Steve Miller, CEO, developer and owner of Blue Rock Country Club, complimented the Council on its revitalization efforts and thanked the Council for attending the development's groundbreaking ceremony on July 13. He presented each one of them with a mounted engraved shovel to commemorate the event. He also acknowledged the staff involved and thanked City Manager Armas for his leadership, and also presented him with a mounted engraved shovel.

Eugene Johns has lived in Hayward for over 34 years and is a retired police officer. He spoke against motorized scooters and mopeds and asked that Council assist in controlling them and the noise they emit. He also spoke against car alarms and urged the Council to consider unnecessary car alarms as a public nuisance.

Jason Moreno spoke about his recent trip to Washington, D.C., and talked about the Native American Museum that recently opened there.

Jim Malone spoke in appreciation of the police and fire personnel who have assisted him during emergency calls, but expressed concern to some insensitivity by a few.

Harry Bruno spoke on the Council's review of the investigative report of the police department.

Lisa Brunner made some suggestions on the Route 238 bypass alternative project and submitted a statement and a diagram.

Ben Bruno made statements related to the recall and the cost of a special election.

Barbara Heringer-Swarr invited all to the Chabot College film series held on Thursdays on globalization and current "Democracy Now" programs.

Al Reynolds commented on his involvement with the campaign of a former council member.

Francisco Abrantes spoke on the waste of money and the cost of real estate.

Don Sheppard stated that he has lived in Hayward for over 34 years. He commented on the current recall and noted that "hurt feelings" do not justify a recall. He objected to financing a recall as it is not a good use of the City's money. He recognized the Mayor, Council and the City Manager for their accomplishments in improving Hayward. He urged voters not to sign the recall petition.

Al Mendall spoke against the recall and felt that disagreeing was not the answer for a recall. He noted that the next city election will occur in just 18 months and voters can consider candidates at that time. He urged everyone to try and do our best to work together to do the right thing.

## **CONSENT**

1. Approval of Minutes of the City Council Meeting of September 14, 2004

It was moved by Council Member Henson, seconded by Council Member Halliday, and carried with Council Member Quirk absent, to approve the minutes of the City Council Meeting of September 14, 2004.

2. Approval of Minutes of the City Council Meeting of September 21, 2004

It was moved by Council Member Henson, seconded by Council Member Halliday, and carried with Council Member Quirk absent, to approve the minutes of the City Council Meeting of September 21, 2004.



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3. Adoption of an Ordinance Adding Article 18 to Chapter 10 of the Hayward Municipal Code, Establishing Provision for Surface Mining and Reclamation

Staff report submitted by City Clerk Reyes, dated September 28, 2004, was filed.

It was moved by Council Member Henson, seconded by Council Member Halliday, and carried with Council Member Quirk absent, to adopt the following:

Ordinance 04-12, "An Ordinance Adding Article 18 to Chapter 10 of the Hayward Municipal Code, Establishing Provisions for Surface Mining and Reclamation"

4. Adoption of an Ordinance Amending Sections of Article 1 of Chapter 10 of the Hayward Municipal Code, Establishing Provisions for Batch Plants

Staff report submitted by City Clerk Reyes, dated September 28, 2004, was filed.

It was moved by Council Member Henson, seconded by Council Member Halliday, and carried with Council Member Quirk absent, to adopt the following:

Ordinance 04-13, "An Ordinance Amending Sections 10-1.2020(b) (3) and 10-1.3510 of Article 1 of Chapter 10 of the Hayward Municipal Code, Establishing Provisions for Batch Plants"

5. Highland Chain Pump Station Improvement Project: Appropriation of Funds

Staff report submitted by Deputy Director of Public Works Bauman, dated September 28, 2004, was filed.

It was moved by Council Member Henson, seconded by Council Member Halliday, and carried with Council Member Quirk absent, to adopt the following:

Resolution 04-141, "Resolution Amending Resolution 04-102, as Amended, the Budget Resolution for Capital Improvement Projects for Fiscal Year 2004-05, Relating to an Appropriation of Funds from the Water System Capital Improvement Fund to the Highland Chain Pump Station Improvement Project, Project No. 7143"

## HEARINGS

6. Revocation of Administrative Use Permit PL-2003-0576 - Truck and Bus Driving School- Initiated by the Planning Director - Moe Janda (Owner) -The Property is Located at 2977 Baumberg Street in an Industrial District

Staff report submitted by Principal Planner Patenaude, dated September 28, 2004, was filed.

Principal Planner Patenaude made the staff report noting that this was before Council previously with stipulations to comply within staff timelines and submit required documents.

Council Member Henson asked for clarification on how staff worked with the applicant. It was noted that drawings were submitted by the applicant, but they did not conform to the requirements or timeframe. The applicant attempted to apply for another use permit, but was informed to apply for building and grading permits. The applicant did replace the chain-link fence on the property.

Council Member Halliday referred to a letter from the applicant and noted that she spoke with him regarding his issues. She asked for a staff explanation on the plans that the applicant actually submitted. In response, Principal Planner Patenaude noted the incompleteness of applications and other documents submitted. There were some items that were reviewed by staff that were due by May 27th, but the important items that are being discussed were due by July 26<sup>th</sup> which includes the plans for the application of the building permit. A set of plans was received following the letter that was sent setting the revocation hearing without an application for the building permit.

Council Member Jimenez asked why the owner could not comply with staff requirements. He pointed out that staff has been patient with the applicant.

Mayor Cooper opened the public hearing at 9:10 p.m.

Moe Janda made a statement that he submitted various plans in compliance to Council and staff and indicated he could comply within 25 days. He also asked that his engineer respond to questions regarding this project. In response to Council Member Henson's question, Mr. Janda stated when he submitted plans and drawings, he was not certain of the permit process. He noted, through his engineer, that some review will need to be made by the Alameda County Flood Control Agency.

Mayor Cooper closed the public hearing at 9:29 p.m.

There was discussion on whether the applicant submitted the proper plans. Staff reiterated that the submittals were not in compliance with City regulations and the applicant was not experienced and there was some miscommunication. The deadline to submit the plans was July 26<sup>th</sup> and staff did not believe that the applicant could comply.

Mayor Cooper expressed her concern with the applicant's efforts and felt that the applicant had not been consistent. She noted that if the applicant had obtained a business license before starting his business, he would not be in this predicament. She pointed out that Mr. Janda has yet to prove that he can comply if Council grants another extension. She stated that she would not be voting for an extension or vote in favor of revoking "without prejudice."



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Council Member Dowling stated that Council was not denying the use of the property for this type of business.

There was discussion on whether the applicant could submit a new administrative use permit application, which could take about six weeks. It was noted that if the Council votes to revoke the permit, Mr. Janda would need to cease operating his business. He could apply for an administrative use permit which would take about six weeks to be approved at staff level.

Council Member Dowling stated that he reluctantly made the motion the last time this was on the Council's agenda. He moved to accept the staff recommendation to revoke the use permit without prejudice, which would allow the applicant to return to apply for a new use permit.

Council Member Jimenez recommended that Mr. Janda continue to improve his property even if the Council votes to revoke his use permit and continue to utilize the engineer to complete this project.

Council Member Ward asked staff if this would set any precedent. City Attorney O'Toole responded that the time period or waiting period for the revocation of a use permit and the denial of an application are the same. Mr. Janda would need to cease his business until he obtained the appropriate use permit.

Council Member Henson stated that he visited the site and spoke with Mr. Janda, emphasizing the need of the business owner to comply within the timeframes. He stated that he was confident that Mr. Janda would comply, but that did not occur. He had hoped that Mr. Janda could have presented evidence that he was complying with staff timelines at this time.

It was moved by Council Member Dowling, seconded by Council Member Henson, and carried by the following roll call to adopt the following:

Resolution 04-142, "Resolution Denying Administrative Use Permit  
Application No PL-2003-0576, Moe Janda (Applicant/Owner)"

AYES: Council Members Jimenez, Halliday, Dowling, Henson  
NOES: Council Member Ward  
MAYOR Cooper  
ABSENT: Council Member Quirk  
ABSTAINED: None

## **LEGISLATIVE BUSINESS**

### **7. Resolution in Support of Proposition 1A, Protection of Local Government Revenues**

Staff report submitted by City Manager Jesús Armas, dated September 28, 2004, was filed.

City Manager Armas stated that this proposition, if approved, will safeguard local governments that have been impacted in the past by the governor and legislators in Sacramento. For some time now they have been using local governments to help bail it out of its financial situation. As a result of this, the City has suffered a loss of \$40 million in the past ten years. Any further takings will be considered loans and expected to be repaid with interest. A stronger Proposition 65, an initiative driven by local agencies is also on the ballot, but the Governor would not be supporting this.

Council Member Jimenez moved to endorse this proposition. Council Member Dowling noted that it was the Democratic legislature that would not agree to Proposition 65 and instead placed 1A on the ballot. He thanked local legislators, Assembly Members Dutra and Corbett, who supported Proposition 65 and voted against Proposition 1A.

Council Member Henson noted that this is easily the better option. He still believes that the Governor could still cite extenuating circumstances and hold back funding from cities and local agencies, even with Proposition 1A. He would be supporting both Propositions 1A and Proposition 65. The Proposition receiving the highest votes will prevail.

There were no speakers. Mayor Cooper opened and closed the public hearing at 9:54 p.m.

It was moved by Council Member Jimenez, seconded by Council Member Ward, and carried, with Council Member Quirk absent, to adopt the following:

Resolution 04-143, "Resolution in Support of Proposition 1A"

## **COUNCIL REPORTS**

There were no Council reports.

## **ADJOURNMENT**

Mayor Cooper adjourned the meeting at 9:55 p.m.

APPROVED:

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Roberta Cooper, Mayor, City of Hayward

ATTEST:

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Angelina Reyes, City Clerk, City of Hayward

**DRAFT**